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WRITER'S DIRECT DIAL NUMBER

January 24, 1997

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ASSOCIATE

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EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

JAN 27 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CC Docket No. 96-45
Universal Service

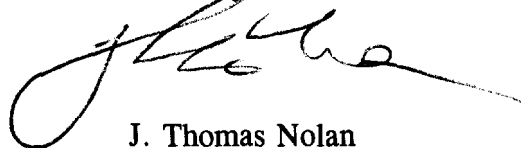
Dear Mr. Caton:

A copy of the attached letter was delivered today to Mark Nadel of the Commission's Common Carrier Bureau, in response to his inquiry in the above-captioned proceeding.

Two copies of this letter are being submitted to the Secretary of the Commission pursuant to § 1.1206(a)(1) of the Commission's Rules.

Please contact the undersigned if you have any questions or require additional information concerning this matter.

Sincerely,



J. Thomas Nolan

cc Mark Nadel

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WRITER'S DIRECT DIAL NUMBER

January 24, 1997

VIA HAND DELIVERY

Mark Nadel
Universal Service Branch
Federal Communications Commission
2100 M Street N.W.
Washington, D.C. 20554

Re: Application of Section 254(e) to the Schools and
Libraries Provisions of Section 254(h)

Dear Mark:

As we discussed today, we believe that Section 254(e) was not intended to restrict the beneficiaries of universal service support in connection with the schools and libraries provisions of Section 254(h).

Section 254(e) provides that only an "eligible telecommunications carrier designated under Section 214(e)" is eligible to receive specific universal service support. Section 214(e), in turn, draws a distinction between types of common carriers, making certain carriers "eligible" in return for their commitment to serve as a carrier of last resort. The distinction drawn in these provisions is between "eligible" and "non-eligible" carriers, *not* between carriers and non-carriers. Section 254(e), drafted before the Snowe-Rockefeller amendment adding subsection (h), deals with carriers providing "core" universal service -- quality services, affordable rates, and access in rural and high-cost areas. The restrictions in subsection (e) make sense in connection with "core" universal service because the benefits of universal service should only be available to those carriers that undertake to serve high-cost subscribers, and should not encourage "cream-skimming."

Section 254(h), on the other hand, covers both carriers and non-carriers. Subsection (h)(1)(B) deals only with services provided by telecommunications carriers. It describes the universal service support procedures for the services provided by these carriers to schools and libraries. Any service falling within the definition of universal service, including advanced telecommunications and

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Mark Nadel
January 24, 1997
Page 2

information services designated under section 254(c)(3), *if provided by a telecommunications carrier*, is covered by the process described in (h)(1)(B).

Subsection (h)(2)(A), therefore, deals with services provided by entities that are *not* telecommunications carriers. Although subsection (h)(2)(A) mentions advanced telecommunications services (along with information services), it requires the Commission to enhance *access* to those services. For example, internal connections can enhance access, but they are not a telecommunications service. Any service to schools and libraries falling within subsection (h)(2)(A)'s mandate that happens to be supplied by a telecommunications carrier is covered under subsection (h)(1)(B), leaving (h)(2)(A) for non-carrier services.

The carrier/non-carrier interpretation of Section 254(h) is supported by at least four factors. First, if the phrase "enhance . . . access" permits the FCC to create discounts for telecommunications services but not for information services, as some parties have argued, this would read subsection (h)(2)(A) out of the Act entirely, since such discounts are already mandated under subsection (h)(1)(B).

Second, in subsection (h)(1)(B)(ii), Congress provided that "notwithstanding the provisions of subsection (e)" telecommunications carriers could be reimbursed through universal service funds even though they are not "eligible" carriers. If Congress had intended subsection (h)(2)(A) to apply to telecommunications carriers, it would have included this same exception in (h)(2).

Third, the inclusion of the "notwithstanding" language also shows that Congress opened the door for the Commission to provide universal service funds to entities other than eligible telecommunications carriers. Section 254(e) is not the absolute bar that it appears on its face to be.

Finally, the inclusion of the "competitively neutral" language in subsection (h)(2) shows that Congress was concerned that allowing telecommunications carriers to receive discounts on information services pursuant to (h)(1)(B) could create a competitive imbalance, which the Commission could correct through (h)(2) rules.

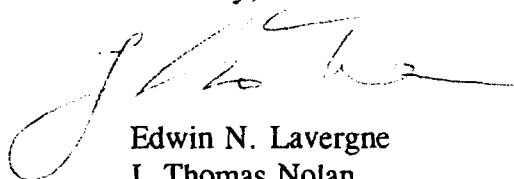
* * * * *

We recognize that the statutory language is ambiguous, and that resolving these issues is difficult. Let us be clear on one point, however: allowing only telecommunications carriers to provide Internet access service at a discount is simply not competitively neutral, and would effectively bar all but carrier-affiliated ISPs from serving the schools and libraries

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market. The legislative history clearly demonstrates Congress's intent to promote Internet access in schools and libraries, and its desire to ensure competitive neutrality. These considerations support the Commission's adoption of rules designating Internet access service as a service eligible for funding, and permitting both telecommunications carriers and non-carriers to participate in the discount and reimbursement program.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Edwin N. Lavergne', with a large, stylized initial 'E'.

Edwin N. Lavergne
J. Thomas Nolan
Counsel to America Online, Inc.